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8 **IN THE UNITED STATES DISTRICT COURT**
9 **FOR THE EASTERN DISTRICT OF CALIFORNIA**
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11 BILLY D. WILLIAMS,

12 Plaintiff,

13 v.

14 CALIFORNIA DEPARTMENT OF
15 CORRECTIONS AND
REHABILITATION, et al.,

16 Defendants.
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No. 2:22-CV-2126-DMC-P

ORDER

18 Plaintiff, a prisoner proceeding pro se, brings this civil rights action pursuant to
19 42 U.S.C. § 1983. Pending before the Court is Plaintiff's original complaint, ECF No. 1.

20 The Court is required to screen complaints brought by prisoners seeking relief
21 against a governmental entity or officer or employee of a governmental entity. See 28 U.S.C.
22 § 1915A(a). This provision also applies if the plaintiff was incarcerated at the time the action was
23 initiated even if the litigant was subsequently released from custody. See Olivas v. Nevada ex rel.
24 Dep't of Corr., 856 F.3d 1281, 1282 (9th Cir. 2017). The Court must dismiss a complaint or
25 portion thereof if it: (1) is frivolous or malicious; (2) fails to state a claim upon which relief can
26 be granted; or (3) seeks monetary relief from a defendant who is immune from such relief. See
27 28 U.S.C. § 1915A(b)(1), (2). Moreover, the Federal Rules of Civil Procedure require that
28 complaints contain a “. . . short and plain statement of the claim showing that the pleader is

entitled to relief.” Fed. R. Civ. P. 8(a)(2). This means that claims must be stated simply, concisely, and directly. See McHenry v. Renne, 84 F.3d 1172, 1177 (9th Cir. 1996) (referring to Fed. R. Civ. P. 8(e)(1)). These rules are satisfied if the complaint gives the defendant fair notice of the plaintiff’s claim and the grounds upon which it rests. See Kimes v. Stone, 84 F.3d 1121, 1129 (9th Cir. 1996). Because Plaintiff must allege with at least some degree of particularity overt acts by specific defendants which support the claims, vague and conclusory allegations fail to satisfy this standard. Additionally, it is impossible for the Court to conduct the screening required by law when the allegations are vague and conclusory.

I. PLAINTIFF’S ALLEGATIONS

Plaintiff names the following parties as Defendants: (1) California Department of Corrections and Rehabilitation (CDCR); (2) Board of Parole Hearings – Case Records; (3) the District Attorney’s Office; (4) the CC Appellate Program; and (5) the Probation Office. See ECF No. 1, pg. 1. Prior to filing the complaint, Plaintiff filed an informal appeal and states he was denied further appeals because the decision was “time expired.” See id. at 1-2.

Plaintiff alleges that he was convicted of serious felonies under California Penal Code 1192.7 in 2012. See id. at 3. However, Plaintiff contends that the CDCR computer incorrectly reflects that he was sentenced under California Penal Code 667.5 (c), which constitutes a strike on Plaintiff’s record. See id. Plaintiff further asserts that this inaccurate record renders him “ineligible for new laws (Prop 57)” and that his “due process rights under equal protection” are violated due to this inaccuracy. See id. Plaintiff requests injunctive relief to be “eligible for all that nonviolent offenders receive.” See id. The Court interprets this as a request to have Plaintiff’s record corrected and to receive a hearing with the Board of Parole Hearings. Plaintiff’s complaint does not assert any allegations regarding an individual, but states “every defendant has told me during the last 11 years [that] [he] [is] not eligible” to be impacted by Proposition 57. See id.

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II. DISCUSSION

Plaintiff's complaint suffers from two key defects. First, CDCR is immune under the Eleventh Amendment. Second, as to all remaining defendants, Plaintiff has not alleged the personal involvement of any individual or explained how that individual caused a deprivation of Plaintiff's rights.

A. Eleventh Amendment Immunity

The Eleventh Amendment prohibits federal courts from hearing suits brought against a state both by its own citizens, as well as by citizens of other states. See Brooks v. Sulphur Springs Valley Elec. Coop., 951 F.2d 1050, 1053 (9th Cir. 1991). This prohibition extends to suits against states themselves, and to suits against state agencies. See Lucas v. Dep't of Corr., 66 F.3d 245, 248 (9th Cir. 1995) (per curiam); Taylor v. List, 880 F.2d 1040, 1045 (9th Cir. 1989). A state's agency responsible for incarceration and correction of prisoners is a state agency for purposes of the Eleventh Amendment. See Alabama v. Pugh, 438 U.S. 781, 782 (1978) (per curiam); Hale v. Arizona, 993 F.2d 1387, 1398-99 (9th Cir. 1993) (en banc).

Here, CDCR is California's agency responsible for incarceration and correction and, as such, is an immune state agency. Plaintiff cannot proceed against CDCR.

B. Causal Connection

To state a claim under 42 U.S.C. § 1983, the plaintiff must allege an actual connection or link between the actions of the named defendants and the alleged deprivations. See Monell v. Dep't of Social Servs., 436 U.S. 658 (1978); Rizzo v. Goode, 423 U.S. 362 (1976). "A person 'subjects' another to the deprivation of a constitutional right, within the meaning of § 1983, if he does an affirmative act, participates in another's affirmative acts, or omits to perform an act which he is legally required to do that causes the deprivation of which complaint is made." Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978). Vague and conclusory allegations concerning the involvement of official personnel in civil rights violations are not sufficient. See Ivey v. Board of Regents, 673 F.2d 266, 268 (9th Cir. 1982). Rather, the plaintiff must set forth specific facts as to each individual defendant's causal role in the alleged constitutional deprivation. See Leer v. Murphy, 844 F.2d 628, 634 (9th Cir. 1988).

1 Here, Plaintiff has alleged conduct by various agencies who can only act through
2 their individual employees. Plaintiff has not, however, named any individual defendants or
3 explained how an individual defendant violated his rights. Plaintiff will be provided an
4 opportunity to amend.

6 III. CONCLUSION

7 Because it is possible that some of the deficiencies identified in this order may be
8 cured by amending the complaint, Plaintiff is entitled to leave to amend prior to dismissal of the
9 entire action. See Lopez v. Smith, 203 F.3d 1122, 1126, 1131 (9th Cir. 2000) (en banc). Plaintiff
10 is informed that, as a general rule, an amended complaint supersedes the original complaint. See
11 Ferdik v. Bonzelet, 963 F.2d 1258, 1262 (9th Cir. 1992). Thus, following dismissal with leave to
12 amend, all claims alleged in the original complaint which are not alleged in the amended
13 complaint are waived. See King v. Atiyeh, 814 F.2d 565, 567 (9th Cir. 1987). Therefore, if
14 Plaintiff amends the complaint, the Court cannot refer to the prior pleading in order to make
15 Plaintiff's amended complaint complete. See Local Rule 220. An amended complaint must be
16 complete in itself without reference to any prior pleading. See id.

17 If Plaintiff chooses to amend the complaint, Plaintiff must demonstrate how the
18 conditions complained of have resulted in a deprivation of Plaintiff's constitutional rights. See
19 Ellis v. Cassidy, 625 F.2d 227 (9th Cir. 1980). The complaint must allege in specific terms how
20 each named defendant is involved, and must set forth some affirmative link or connection
21 between each defendant's actions and the claimed deprivation. See May v. Enomoto, 633 F.2d
22 164, 167 (9th Cir. 1980); Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978).

23 Because some of the defects identified in this order cannot be cured by
24 amendment, Plaintiff is not entitled to leave to amend as to such claims. Plaintiff, therefore, now
25 has the following choices: (1) Plaintiff may file an amended complaint which does not allege the
26 claims identified herein as incurable, in which case such claims will be deemed abandoned and
27 the Court will address the remaining claims; or (2) Plaintiff may file an amended complaint which
28 continues to allege claims identified as incurable, in which case the Court will issue findings and

1 recommendations that such claims be dismissed from this action, as well as such other orders
2 and/or findings and recommendations as may be necessary to address the remaining claims.

3 Finally, Plaintiff is warned that failure to file an amended complaint within the
4 time provided in this order may be grounds for dismissal of this action. See Ferdik, 963 F.2d at
5 1260-61; see also Local Rule 110. Plaintiff is also warned that a complaint which fails to comply
6 with Rule 8 may, in the Court's discretion, be dismissed with prejudice pursuant to Rule 41(b).
7 See Nevijel v. North Coast Life Ins. Co., 651 F.2d 671, 673 (9th Cir. 1981).

8 Accordingly, IT IS HEREBY ORDERED that:

- 9 1. Plaintiff's original complaint is dismissed with leave to amend; and
- 10 2. Plaintiff shall file a first amended complaint within 30 days of the date of
11 service of this order.

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13 Dated: July 24, 2023



14 DENNIS M. COTA
15 UNITED STATES MAGISTRATE JUDGE
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